

# EXHIBIT I

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 DANIEL SCHUR,  
4 Plaintiff,

5 v.

17 Civ. 546 (PGG)

6 STRATEGIC FINANCIAL SOLUTIONS,  
7 LLC, et al.,

8 Defendants.

Conference

9  
10  
11 Before:

12 HON. PAUL G. GARDEPHE

New York, N.Y.  
May 11, 2017  
10:30 a.m.

District Judge

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17 APPEARANCES

18  
19 STEPHAN ZOURAS LLP  
20 Attorneys for Plaintiff  
21 BY: JAMES B. ZOURAS (tel.)  
JONATHAN I. NIRENBERG

22  
23 KAUFMAN DOLOWICH & VOLUCK LLP  
24 Attorneys for Defendants  
BY: MICHAEL A. KAUFMAN  
MATTHEW R. CAPOBIANCO

1 (Case called; in the robing room)

2 THE COURT: Mr. Zouras, this is Judge Gardephe.

3 MR. ZOURAS: Good morning, your Honor. Thank you for  
4 allowing me to appear by phone.

5 THE COURT: I have with me Mr. Nirenberg, and then I  
6 have Mr. Kaufman and Mr. Capobianco as well, and we also have a  
7 court reporter.

8 Let me say for the record that this is an FLSA and New  
9 York Labor Law claim for unpaid overtime and that the defendant  
10 is involved in the business of debt consolidation services.  
11 Plaintiff worked in that capacity selling those services,  
12 alleges he was not paid in compliance with the law.

13 Have there been any settlement discussions between the  
14 parties? Mr. Nirenberg or Mr. Zouras, have you tried to settle  
15 the matter with defense counsel?

16 MR. ZOURAS: Yes, your Honor. In the process, defense  
17 counsel approached us and offered to provide us some data for  
18 what was then an individual by the name of Daniel Schur, who  
19 brought the case. Subsequently, another opt-in plaintiff  
20 joined the case. They offered to provide data for those two  
21 individuals, and they haven't done that. We have evaluated it.  
22 We appreciate those efforts.

23 A couple of reasons we can't really engage in  
24 meaningful discussions at this time. We have brought the case,  
25 as you noted, as a class and collective action, so we would

1 need to determine, number one, the scope of the class, exactly  
2 what we are talking about. Number two, we need to engage in  
3 discovery to vet out some of the issues we have raised and some  
4 of the defenses the defendants have raised.

5 It isn't so much that we engaged in a settlement  
6 discussion in terms of making an offer, making a demand, or  
7 anything like that. That's a bit premature. But at least we  
8 have engaged in a meaningful dialogue to let everybody know  
9 where we stand. I think the process was helpful for at least  
10 vetting the issues and hopefully narrowing what is really in  
11 dispute.

12 THE COURT: It sounds like this is not a case that is  
13 going to settle based on the individual who brought the case or  
14 the person who opted in, that if there is going to be a  
15 settlement here, it is going to going to have to be on a  
16 collective or class basis. Is that what you are saying?

17 MR. ZOURAS: That is correct, your Honor, yes.

18 THE COURT: Let me ask defendants, do defendants  
19 intend to oppose a motion for court-authorized notice?

20 MR. KAUFMAN: Your Honor, I guess the answer is we  
21 may. The reason I'm saying that is we are a little frustrated  
22 by this whole process. From the beginning of this case, we  
23 have turned over both payroll records and door punches in the  
24 building showing when people are coming and going. We have  
25 offered to give more information to try to show you that there

1 is no claim here.

2 We've given them all the payroll records for both  
3 Daniel Schur and Haldon Bagley. Daniel Schur, the lead  
4 plaintiff, we would say arguably owes us about \$60 that we  
5 overpaid him. And this other person, Haldon Bagley, we owe 21  
6 cents to. If there are other issues with our payroll keeping,  
7 we have tried to rectify them on a weekly basis. There is no  
8 issue here.

9 In fact, I have said this over and over again to  
10 plaintiff's counsel, there are two sets of electronic records  
11 here. The person cannot work unless they are logged in to  
12 their computer. When they enter a building, there is a punch  
13 that shows up electronically.

14 So we are a little frustrated. We have asked for a  
15 demand of any sort to try to move this along. We do understand  
16 that they have rights to go forward on a collective or class  
17 basis. But at some point in time you see enough of these cases  
18 and know there is nothing here. If there is some way we could  
19 expedite moving this along. We have tried. We have opened our  
20 books. Tell us. This is not one of those big cases.

21 THE COURT: Mr. Zouras, do you believe there is some  
22 reason to distrust the accuracy of the records that defense  
23 counsel has referred to?

24 MR. ZOURAS: Yes, your Honor. The fundamental point  
25 of our case has always been that the time these folks are

1 working, in other words, when they are physically at the office  
2 and time is being recorded, the defendant at that time is not  
3 accurately recording all time worked.

4 In other words, they who are controlling the  
5 timekeeping system are falsely recording time that indicates it  
6 is only 40 hours a week or at least just slightly over 40 hours  
7 a week, when in reality these folks are working off the clock  
8 as many as 50 hours a week.

9 So, when they now produce data saying, hey, it only  
10 shows 40, we paid for 40, hey, it only shows 41, we paid for  
11 41, we already know that is what those records that they are  
12 going to show us say. But that's not the point of our case,  
13 your Honor.

14 With respect to the data that apparently came from the  
15 building, we have no reason to refute it, to disagree with it.  
16 It shows when persons entered the building and exited. We all  
17 know about badge light data. When you enter the building, it  
18 will show you entering the building. There is no record of  
19 when somebody left though. So those records have some value,  
20 but those records are also limited.

21 THE COURT: What I heard from defense counsel is that  
22 in order for the person to be working, they would have to be  
23 logged on to the computer. What I derive from that is one  
24 could tell when someone had logged on and when they had logged  
25 off and thereby reliably determine how many hours they had

1 actually worked. Is there some reason to distrust that?

2 MR. ZOURAS: I don't know. But that's not the data  
3 that we have received, your Honor. What we have received are  
4 time record data. That data is not showing, hey, this is when  
5 somebody logged in and logged out of the computer. That data  
6 may very well exist somewhere. But that is not what we have to  
7 date.

8 MR. KAUFMAN: Your Honor, if I haven't been clear in  
9 the past in plaintiff's counsel, then I will clear this up.  
10 That data is all based on when they are on their computer.  
11 When they log off, there is nothing for them to do. They can't  
12 make phonecalls, they can't do anything. They have to have the  
13 the data in front of them. They have to be logged on.

14 I just would add that while I do understand that the  
15 time swipes only show when somebody is coming, not going, the  
16 plaintiff or lead plaintiff in this case averaged leaving or  
17 coming into the building six times a day. There is certainly a  
18 lot of validity to that time information. I'm not sure what  
19 else I can add to this.

20 THE COURT: First of all, counsel is not on same page  
21 as to what the records that have already been produced show.  
22 That suggests to me that it might make sense to take a little  
23 more time to understand what has been produced and to make sure  
24 that there is reason to believe that people were working more  
25 hours than they were paid for.

1           It does seem to me, if one accepts what defense  
2   counsel has represented, first of all, that an employee cannot  
3   do work until they are logged on. That's number one. Point  
4   two is there is a record of when employees log on and log off.  
5   Just based on that, it would seem that the parties could reach  
6   an agreement on how many hours a particular employee worked.

7           I would suggest that you attempt to reach a common  
8   understanding on that point before we go much further unless  
9   someone tells me differently, and you are welcome to do so. I  
10   would suggest that the lawyers spend another, say, 30 days to  
11   figure out whether there is a way to reach a resolution here.  
12   If someone is violently opposed to that, say so. Based on what  
13   I have seen so far, I think it would be a shame to embark on  
14   discovery and motion practice under the circumstances.

15           Mr. Zouras, what do you say? Are you willing, you and  
16   Mr. Nirenberg, to have a few more conversations with defense  
17   counsel about these records and what they show?

18           MR. ZOURAS: Sure. We are happy to do that, your  
19   Honor. Again I need to emphasize the point of our discussions  
20   and the area of controversy. We have done this for 20 years  
21   now, so we understand this and we bring cases like this all the  
22   time.

23           We have seen records that are computer records, log  
24   in/log out records, where the human using the computer has to  
25   input something to turn the computer on and turn it off, and

1 you can get a corresponding record of that. We can bear down,  
2 number one, to see if those records have been produced and, if  
3 not, do they exist. We are happy to have that discussion, your  
4 Honor.

5 THE COURT: I would suggest that you take 30 days to  
6 do that. At the end of that period, if you are not able to  
7 reach resolution, you will let me know, I'll enter a case  
8 management plan. The one you have proposed is quite lengthy.  
9 Before I would approve any period remotely like that, I would  
10 need to understand why a period of 90 or more days is  
11 appropriate in this type of case. It is a little bit hard to  
12 get a grasp of the case because I have no idea of the size of  
13 the putative or collective class. Does anyone here have any  
14 idea how many people we might be talking about?

15 MR. KAUFMAN: I think it is 400 or so. Is that  
16 correct? Somewhere in that range.

17 THE COURT: Do you have any sense, Mr. Zouras, of how  
18 many people we are talking about?

19 MR. ZOURAS: Yes, your Honor. We pegged it at  
20 somewhere between 3 to 500 folks, somewhere in that  
21 neighborhood. That's under the 6-year New York statute of  
22 limitations, your Honor.

23 THE COURT: All right. What I would like you to do is  
24 take another 30 days to exchange information, talk about the  
25 documents or the computer-derived information that's been

1 provided. If you are not able to reach agreement on the case.  
2 I'll enter a case management plan at the end of that period.

3 I'm going to want to know at that point whether  
4 defense counsel is going to oppose a motion for the  
5 dissemination of court-authorized notice. If so, I want the  
6 lawyers to propose a schedule for briefing on that. As  
7 everyone here knows, the standard for dissemination of notice  
8 is quite low. But if it is going to be litigated we will need  
9 to set a schedule for that.

10 I will need justification for anything like the period  
11 of discovery that was initially requested, so that will have to  
12 be included. If at any point anyone would like a referral to  
13 the assigned magistrate, we have an excellent magistrate judge  
14 assigned to the case, Judge Pitman. He is available to you for  
15 settlement purposes if at any point you think that would be  
16 helpful.

17 MR. KAUFMAN: Your Honor, if I may add. To verify our  
18 records also, we have an affidavit we have given to them from  
19 our head of human resources verifying both sets of records that  
20 we have turned over. We are trying to move this along.

21 THE COURT: I hope you can. It is in everybody's  
22 interest to bring the thing to a rapid resolution if we can  
23 before more time and effort is invested in the case. If you  
24 can't, you will send me a letter in 30 days addressing the  
25 issue of court-authorized notice, the length of the discovery

1 period, and I will enter a case management plan at that point.

2 Mr. Zouras, is there anything else you want to say?

3 MR. ZOURAS: No. I think we have covered all of the  
4 issues at hand, your Honor.

5 THE COURT: How about counsel here in the room?

6 Anything else anyone wants to say?

7 MR. KAUFMAN: No, your Honor.

8 THE COURT: Thank you all. Good day.

9 (Adjourned)

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